

REMARKS

Claims 1-73 are now pending in the application. Claims 1-53 and 65-73 are withdrawn from consideration as drawn to a non-elected invention. Applicants have canceled claims 1-53 and 65-73. Claims 58-59 are amended. Claims 54-64 remain pending.

Support for the amendments is found in the specification and claims as originally filed. Applicants respectfully request entry of the amendments.

RESTRICTION REQUIREMENT

In response to the Restriction Requirement and after the Election of Group IV, claims 54-64 with traverse, Applicants have cancelled claims 1-53 and 65-73. Applicants reserve the right to Petition from the Requirement for Restriction according to 37 C.F.R. § 1.144, including deferring the Petition until after a Final Action or Allowance.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Claims 54-56 and 60-64 are rejected under 35 U.S.C. § 102(b) as being anticipated by the Bonk reference (U.S. Patent No. 6,203,868). Applicants respectfully traverse the rejection and request reconsideration.

The Bonk reference does not disclose every limitation of the rejected claims. In particular, the Bonk reference does not disclose a composite that contains at least one flexible layer wherein the layer is a blend of thermoplastic polyurethane, hydroxyl functional co-polymer, and gel reducing additive as recited in claim 54. The error in the Office Action is the citation of the Bonk reference, column 11, lines 47-62, for the proposition that the Bonk reference discloses a gel reducing additive that meets the limitation of claim 54.

The Bonk disclosure of ethylene glycol at column 11 is not of a “gel reducing additive” as recited in the rejected claims. The Bonk disclosure is put into context with the following quotes from the reference, with underlining added for emphasis:

“The inner layer 30, which is the main barrier constituent, primarily responsible for controlling gas permeation, is made from a combination or blend of one or more thermoplastic urethanes formed from polyester polyols or one or more copolymers of and vinyl alcohol. The polyester polyol based thermoplastic urethanes... are generally formed by the reaction product of at least of one of the following: (a) polyester polyol; (b) difunctional extender; (c) isocyanate and/or diisocyanates; and (d) optionally, processing aids.” Bonk, column 11, lines 11-21.

...“Among the difunctional extenders employed in accordance with the teachings of the present inventions are those generally selected from the group consisting of extenders including ethylene glycol, 1,3-propylene glycol...and the like...” Bonk, column 11, lines 47-53.

... “Preferred extenders include ethylene glycol...” Bonk column 11, line 63.

It is seen from the above quotations that the disclosure at column 11 of ethylene glycol is as part of the thermoplastic urethane polymer. This is seen especially in lines 15-20 where the urethane is described as the reaction product of polyol, extender, and isocyanates.

The rejected claims, on the other hand, recite a flexible layer comprising a blend of a gel reducing additive together with a thermoplastic polyurethane and a hydroxyl-functional copolymer. Although it is true that ethylene glycol is an example of a gel reducing additive according to the current disclosure, it is clear from the above passages that the Bonk reference does not teach a composition containing all three of thermoplastic polyurethane, hydroxyl functional co-polymer, and gel reducing additive. Because the reference fails to disclose at least

one limitation of the rejected claims, rejection under § 102 is improper. Accordingly, Applicants respectfully request the rejection be withdrawn.

The claims are also non-obvious in light of the reference. The reference contains no suggestion or motivation to modify what it discloses to arrive at the subject matter of the claims. Accordingly, Applicants respectfully request that the rejected claims be moved to a state of allowability.

CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 58-59 are rejected under 35 U.S.C. § 103(a) as obvious over the Bonk reference (U.S. Patent No. 6,203,868) in view of the Bonk reference (U.S. Patent No. 6,127,026). Applicants respectfully traverse the rejection as applied to the amended claims and request reconsideration.

Applicants have amended claims 58 and 59 to depend from claim 57, which contains allowable subject matter. For this reason, Applicants respectfully request the rejection as applied to the amended claims be withdrawn.

In addition, the deficiencies of the Bonk '868 reference are described above. Applicants respectfully submit that the Bonk patent '026 cited against claims 58 and 59 do not make-up for those deficiencies. For this further reason, Applicants respectfully request the rejection be withdrawn.

OBVIOUSNESS TYPE DOUBLE PATENTING REJECTION

Claims 54-56 and 58-64 are provisionally rejected on the grounds of obviousness type double patenting in view of claims 28-54 of Co-pending Application 10/633,764 in view of the Bonk '868 patent. Applicants respectfully traverse the rejection and request reconsideration.

The deficiencies of the Bonk '868 patent with respect to claims 54-56 and 58-64 are discussed above. It is demonstrated that the Bonk '868 patent does not recite the gel reducing agent required in claim 54.

As stated in the Office Action claims 28-54 of the Co-pending Application also do not recite the gel reducing agent of the rejected claims. Because neither the primary nor secondary references cited in the obviousness type double patenting rejection in fact disclose a key limitation recited in the rejected claims, Applicants respectfully submit that the rejected claims are not obvious over the co-pending claims. Accordingly, Applicants respectfully request that the rejection for double patenting be withdrawn.

ALLOWABLE SUBJECT MATTER

Claim 57 is objected to as dependent from a rejected base claim but contains allowable subject matter. Applicants have demonstrated above that the other rejected claims (54-56 and 58-64) are allowable. Applicants therefore believe that claim 57 is now allowable without having to be rewritten in independent form. Accordingly, Applicants respectfully request that the objection to claim 57 be withdrawn.

CONCLUSION

For the reasons discussed above, Applicant believes that claims 54-64 are in a state of allowability and request an early Notice of Allowance. The Examiner is invited to telephone the undersigned if that would be helpful to resolving any issues.

Respectfully submitted,

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